# NEWS NOTES

OF THE CENTRAL COMMITTEE FOR CONSCIENTIOUS OBJECTORS

Vol. 2 No. 1, February, 1950 Philadelphia, Pa.


# YOUNGEST C.O. CONVICTED

## CONVICTION REVERSED

### Refusal to Sign may not be Crime, Court Holds

The conviction of Edgar R. Norton, 21, for refusing to register for Selective Service in September, 1948, has been reversed by the U. S. Court of Appeals for the Second Circuit (New York.) The decision by Judge Thomas W. Swan, which was concurred in by Judges Charles E. Clark and Learned Hand, confined itself to the technical question of what constitutes a refusal to register, and did not deal with the issues of religious liberty and Selective Service constitutionality which Norton had also raised. Even so, if this decision could be applied to other non-registrant convictions, many would also be voided.

Testimony in Norton's trial revealed that he went to his draft board in Glens Falls, N.Y., on Sept. 13, 1948, and handed the clerk a letter explaining that he would not register "because I believe this draft law is contrary to God's will. I cannot participate in it even so far as to register." The clerk referred him to the board's chairman, who sent him to a clergyman for counsel, after which Norton again talked at length with the local Board Chairman, and reaffirmed his

*(Continued on Page 6)*

## Michener is Found Guilty, Will be Sentenced Feb. 27

The 66th non-registrant to be convicted so far, Robert Michener, 18, of Fort Hays, Kansas, was found guilty of refusing to register by a Federal Court jury in Wichita on January 26. Judge D. C. Hill released him without bond pending imposition of sentence on February 27.

The youngest conscientious objector yet convicted for violation of the "stand-by" draft law, Michener became 18 on May 26, and thus within the limits of the Selective Service Act. On June 2 he went to his draft board to explain his refusal, and during his trial the clerk of that draft board said that when he came in he was very co-operative and was willing to answer all questions asked of him, but she did not register him because he said he would refuse to sign the card.

Thus the facts in Michener's case are almost identical to the Norton case, where the Court of Appeals for the Second Circuit has just voided a conviction merely on the grounds of refusing to sign a registration card, and held that a non-registrant who went to his draft board and answered questions had complied with the law even if he refused to sign. If

*(Continued on Page 2)*

## How to Distinguish a "Most Willful" C.O.

Since the Department of Justice decided last May to initiate non-registrant prosecutions only in "the most willful instances," only six new cases have been started and pushed through the courts, while more than threescore other non-registrants have been ignored.

How is the government going about selecting which few men shall be set apart from their fellows and subjected to prosecution and imprisonment? Our readers will recall that the phrase "in the most willful instances" perplexed us a good deal when it was first announced. Is the especially "willful" conscientious objector one who is a "troublemaker and agitator?" Does his willfulness consist of headstrongness, or of trying to conceal his violation? What about the young man who simply persists in conscious, deliberate refusal to register?

Asked about this, Assistant Attorney General Alex Campbell told us that if the conscientious objector "acts like a mule, then he is going to the penitentiary." Even this didn't help us very much, for we have a feeling that all conscientious objectors are going to seem mulish to those who demand that every young man get ready to help fight the next war.

Actions speak louder than words, however, and now that we have had six examples of the kind of man that the government intends to keep on prosecuting, it

*(Continued on Page 4)*


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Ray Newton, Chairman Caleb Foote, Executive Secretary

# THE COURT REPORTER

*I. Non-Registrant Prosecutions*

Out of 84 *arrests* of men charged with refusing to register, 13 have been *dismissed* short of prosecution, including six after the defendant voluntarily registered, and six after involuntary registration.

Five cases are still *pending* in the courts:

ILLINOIS: Robert Beach, Robert Somers

NEW YORK: Wilbur Rippy, Charles Bell, James Neuhasuer

The remaining 66 have been *convicted,* including one since our last issue: Robert Michener, in Wichita, Kans., 1/26/50. He will be sentenced 2/27/50.

*II. Men Currently Imprisoned*

U.S. Correctional Institution, Tallahassee, Fla.: Marvin, Howard and Leonard Rockwell, Wilford Guindon. (All granted parole effective 2/27/50.)

*III. Men Granted Parole*

The following have been paroled since our last issue:

Walter Coppock, Jr., Arthur Emlen, Gilbert McFadden, Atlee Shidler (and we believe Philip Howard.)

*IV. Appeals*

The following non-registrants have appeals pending:

Charles Frantz, Richard Shufflebarger, Robert Richter, Robert Cannon, William Wildman, Robert Wixom, Francis Henderson.

All but Henderson (who has served his sentence) are free on bond pending disposition.

*Conviction reversed: Edgar Norton,* by the Court of Appeals, 2nd Circuit, New York, 1/19/50, Circuit Judges Swan, L. Hand, Clark.

*V. Counselling Cases*

*Convictions affirmed* on appeal: *Wirt A. Warren,* by the Court of Appeals, 10th Circuit, Denver, 10/31/49, Circuit Judges Phillips, Murrah, District Judge Rice. *Larry Gara,* by the Court of Appeals, 6th Circuit, Cincinnati, 11/28/49, Circuit Judges Allen, Simons, McAllister. Both of these are counselling cases, and in both, petitions for certiorari to the U.S. Supreme Court are pending.

*Error* in last issue—*Robert Cannon* is free on bond pending appeal, not incarcerated at Tucson.

STATISTICS ON CONVICTED NON-REGISTRANTS
(figures to 1/31/50)

*Sentences Imposed by the Courts*

3 years: 7
2 years: 3
18 months: 17
1 year and 1 day: 19
under 1 year: 14
suspended sentence plus probation: 3
suspended sentence: 1
Fines imposed in addition to sentence: 10 (average $140 each)
*Maximum* possible sentence: 5 yrs. and $10,000
*Average* of all sentences: about 15 months.

*Present Status of Convicted Men*

| | |
|---|---|
| In prison: | 4 |
| Out on parole or CR: | 37 |
| Have completed sentences: | 10 |
| On probation: | 3 |
| On bond pending appeal: | 6 |
| Conviction reversed: | 1 |

*Religious Faith*

| | |
|---|---|
| Society of Friends (Quakers) | 37 |
| Misc. Protestant denomin. | 14 |
| *None | 12 |
| Unknown | 3 |

*—About half of those marked "none" are "political" or "humanitarian;" the others are "religious" but without affiliation.

*World War II Records*

| | |
|---|---|
| Civilian Public Service (for C.O.'s) | 20 |
| Veterans of Armed Services | 10 |
| Imprisoned as C.O.'s under '40 act | 6 |

*Occupation at time of Arrest*

| | |
|---|---|
| Students | 38 |
| Farmers of farm labor | 11 |
| Teachers | 3 |
| Ministers | 2 |
| Misc. | 12 |

## Michener Convicted

*(Continued from Page 1)*

Michener raises this point in the appeal he is planning, it could mean the reversal of his conviction.

Judge Hill refused to admit evidence on Michener's Quaker background, and defense witnesses were thus confined to character testimony. Michener was represented by Harrop Freeman of Cornell University and Laurence Holmes of Wichita, who plan to raise issues of religious liberty in their appeal.

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*Second Prosecution Threatened*

The old "cat and mouse" game which the Department of Justice has so often played with conscientious objectors became a distinct possibility last month when Amos Brokaw of Muncie, Indiana, was threatened with a new prosecution barely three months after his release from prison for non-registration.

Brokaw also served a term under the 1940 draft act during the last war, so that if Selective Service makes good on its present threat, it will be the third time Brokaw will have been sent "up the river" for trying to remain true to his conscience. He is married, and has an infant child and two stepsons to support as well.

Brokaw's newest offense is his failure to fill out and return the Selective Service draft questionnaire,

*(Continued on Page 4)*

# Draft Renewal Up in Congress

As military and administration pressure to renew Selective Service steadily increased, the likelihood of renewal was increased last month when the military agreed to a compromise proposal whereby registration and classification activities of Selective Service would be continued, but no one could actually be drafted without Congressional approval.

Faced with some Congressional opposition, Administration spokesmen insisted that passage of the legislation was essential to national defense and to responsibilities assumed under the North Atlantic Treaty. At an annual cost of ten and half million, General Bradley testified that Selective Service would buy "more actual preparedness, dollar for dollar, than ...any like amount we might spend in any other way." SS Director General Hershey declared that "to ask why Selective Service is needed when no men are being drafted, is like asking why umbrellas and overshoes are needed when it is not raining."

Opposition to the legislation included not only all-out opponents from peace, labor and educational groups, but a "not enough" cry from the American Legion. Blasting present Selective Service plans as "bluffing and make-believe," the Legion demanded permanent, compulsory military training for all youth instead. Capitol observers, however, give UMT proposals little chance with this election-year session of Congress.

Denouncing the proposed renewal legislation, the National Council Against Conscription charges that the draft was the product of a false war scare, has cost $914 per man actually drafted, and if renewed, will be used to by-pass Congress in setting up UMT. To the military assertion that Selective Service was needed as a "stand-by" in the event of war, the NCAC declared that World War II experience demonstrated that men could be drafted and trained faster than they could be equipped. NCAC also charged that the army, at the same time it wants to keep the draft, has made it steadily harder for men to enlist, and in the last year has abolished two-year enlistments, stopped accepting new recruits with dependents, and has raised the "passing" score in its physical and mental tests to 90. Even so, there are more eligible applicants then they can use. Also challenged was the Administration's assertion that the existence of the draft spurred recruiting. What man anxious to avoid a 21-month draft which isn't being used would be "stimulated" thereby into enlisting for 36 months?

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Actually, the proposed cost of Selective Service is a mere drop in the military bucket. About 75% of the new budget, or 31 billion, is earmarked for war, divided about half and half between payments on past wars (veterans benefits and the national debt) and preparing for the next. The latter includes more than 8 billion to pay military salaries and the military civilian employees, and nearly a billion for atomic energy. The H-bomb isn't in the budget.

# Labor as Defender of Religious Liberty

We belatedly report an excellent resolution adopted by the national C.I.O. convention in Cleveland last November, urging amnesty for all C.O.'s convicted under the 1940 and 1948 draft laws.

"It is our firm belief," the resolution said of the present non-registrants, "that men who, under the compulsion of conscience, take a stand against military conscription in peacetime do not merit confinement in penitentiaries or the resulting loss of civil rights. Such treatment of a minority violates basic human and democratic principles of individual liberty and freedom of conscience. While we oppose the dangerous trend toward state control of religious and minority belief in other lands, it does not become us to make a crime of conscience in this country."

We feel that this statement, together with one adopted by the A.F. of L. which we noted in our last issue, is especially significant because of its contrast with what some of the churches have been saying. None of the church resolutions we have seen has been as forthright as that we have just quoted, and when it is compared with some of the church actions which have come to our notice, it appears that the supposedly secular labor bodies have more concern for religious minority rights than do these religious groups themselves.

The last General Assembly of the Southern Presbyterians, for example, held that "failure to comply" with the draft law "on the part of non-registrants does not constitute conscientious objection of a religious nature." Even more revealing was the action at last fall's General Convention of the Episcopal Church. After the House of Bishops had refused to have anything to do with non-registrant C.O.'s under the present law, it did pass a mild resolution asking for the release of objectors still in prison *from the last war.* When this came up in the lay body, the House of Deputies, it was defeated by a 2 to 1 vote. We hope the lay leadership of the Episcopal Church has since been informed that the last World War II objector was released approximately one year before they voted to keep wartime C.O.'s snugly behind jail bars for a few years more. The average wartime C.O. sentence of three years was more severe than that imposed for white slavery, but apparently it was still too short to satisfy the House of Deputies.

## "Most Willful" C.O.'s

*(Continued from Page 1)*

is reasonable to assume that an examination of these six cases will reveal the characteristics which will distinguish those few non-registrants who are masquerading in mule's clothing.

All six "most willful instances" are Quakers. In the old days it used to be that the C.O.'s who got into the most trouble were those who were not Quakers, but now membership in the Religious Society of Friends gives one a preferred rating as a penitentiary eligible. Those several score political, humanitarian, philosophical, vegetarian and non-peace church religious C.O.'s who have so far been unmolested appear to be safe. The gentlemen in Washington prefer Quakers.

Examination of these six cases likewise discloses that willfulness, besides being a distinctly Quaker trait, is most rampant among the very young. Two of those selected for prosecution are boys only just turned 18, one of whom was pulled out of high school and rushed to a "Federal Correctional Institution" to complete his secondary education. Two more are under 20, and the average age of all six is slightly under 21, compared with an average of 24 for the 60 men prosecuted before the enunciation of the "most willful instance" principle.

Two of the six, to be sure, are old enough to have been involved in the wartime draft. Their cases disclose the type of record which can send even older Quakers to the penitentiary. One served in the Army Medical Corps, and the other, assigned to Civilian Public Service, volunteered to be a human guinea pig and spent over two years in a malaria control experiment.

All six of these men openly informed the government of their action, all had witnesses testifying to their character, integrity and sense of mission. All came with the blessing of their religious group which (in as near to an official statement as Quakers ever get to being official) "warmly endorsed" the action of refusing registration.

These, then, appear to be the distinctive traits by which we can identify "the most willful instance" when we see one. As if to put the official stamp on this new classification of felon, the government attorney in the recent Michener trial announced that he had explicit instructions from the Attorney General of the United States to prosecute. That court trial disclosed that Michener met all of the standards we have just described: 18 years of age, a student, member of a family prominent in the Kansas Yearly Meeting of Friends. There would seem to be no clearer example of the kind of mulish willfulness the government punishes, unless it be the case of the one remaining 18-year-old whom the Department of Justice has not yet prosecuted. He too is a Quaker.

# AMNESTY DENIED

As President Truman was writing his Christmas message ("We can scarcely hope to have a full Christmas if we turn a deaf ear to the sufferings of even the least of Christ's little ones."), the Department of Justice announced no holiday amnesty was forthcoming for wartime pacifists.

Overseas, American military government freed 27 Nazis, and in Spain Franco granted amnesty to small-fry inhabitants of his jails. Pope Pius XII, proclaiming the opening of the holy year, urged that "an end be put to the last remnant of those extraordinary laws which have nothing to do with common crimes.... We implore governments, especially Christian governments, to exercise generously their right of pardon."

Noting that President Truman talks frequently about the Sermon on the Mount yet refuses amnesty, the Baltimore *Sun* asks: "Did he mean it? Or was that just a ghost writer talking."

"If he meant it," the *Sun* continued, "he is being unnecessarily rough on a small number of men who are already trying to live by the principles of the Sermon on the Mount in their refusal to support the war aims of this or any other nation."

## Michener Convicted

*(Continued from Page 2)*

and his draft board has informed him that "unless this questionnaire is returned, completed, at once, it will be necessary to refer your name to the United States Attorney for any action he may deem advisable."

According to Selective Service Regulations, a non-registrant sent to prison is registered by the warden of the institution before his release, and his name sent to the draft board nearest his residence. What further action is taken is up to the board.

According to information in the files of the CCCO, 22 of the 46 non-registrants who have been released from prison have received questionnaires, half of whom returned the questionnaires with a note explaining their continued non-compliance with peacetime conscription. Four of these were subsequently classified (1 each in I-A, IV-A, IV-E and V-A.) The remainder, including those who simply ignored the questionnaire, have heard nothing further with the exception of Brokaw. Two men who received no questionnaires were simply put in class I-A by local boards upon their release from prison.

Selective Service Regulations (at par. 642.31) require that any man in custody who is subject to Selective Service and who has not been registered and classified, "immediately upon his being taken into custody or his being placed in confinement," shall be registered and "shall complete all necessary forms." If he refuses to fill out or sign the forms, the officials shall fill them out, getting the information "from other sources" if necessary, and signing them for the man. So far this requirement has been consistently violated by the Bureau of Prisons and if the Bureau obeyed the law it would end the threat of second prosecutions.

# FOUR CASES UP IN HIGH COURT

## Supreme Court Hears Cohnstaedt, Considers Gara Appeal

*Bulletin!* The Supreme Court on February 9th denied the petition in the Warren case. This ends the last possibility of reversing Dr. Warren's conviction and means that he will have to serve his two-year sentence.

With four petitions before them in cases involving conscientious objectors, the justices of the Supreme Court have agreed to review the Cohnstaedt naturalization case, and have rejected the appeal in the Glendora strike case. Petitions in the Gara and Warren counselling cases have not yet been acted upon.

Martin Cohnstaedt was denied citizenship by the Kansas state courts because of his Quaker conscientious objections to war. The Kansas Supreme Court held that Cohnstaedt, who was classified IV-E during the last war, was not eligible because he would be unwilling to work in a munitions factory or deliver munitions to front line troops in the event of war. The case, which will be argued before the high court early this month, involves interpretation of Congressional intent and of previous court decisions. The Supreme Court apparently opened the way for pacifists to become citizens when in 1946 the Girouard case reversed earlier anti-C.O. decisions. A number of pacifists with similar beliefs to Cohnstaedt's have been admitted as citizens since then, but the Kansas decision narrows the Girouard verdict in an attempt to limit the right of citizenship to those C.O.'s who are willing to actively promote the war effort as non-combatants. Thus the Supreme Court is now being asked to clarify what it meant by the Girouard case.

*Glendora Strike Appeal Rejected*

The last hope of getting Supreme Court review of the legality of Civilian Public Service was dashed last month when the Court refused to review the Glendora Strike case. This arose from a work strike at the C.P.S. camp at Glendora, California, and in challenging their conviction the strikers (who received suspended sentences) raised three points at which they contended that Civilian Public Service violated the Constitution and Congressional intent: (1) that the work done was not actually work of national importance, as required by the law; (2) that the camps were under military command, although Congress has decreed civilian control of C.O.'s; (3) that the requirement of work without pay re-established slavery and violated the Constitution.

*Gara and Warren Cases*

Most crucial of the C.O. cases, and the ones which affect far more people than pacifists, are the counselling appeals in the convictions of Wirt A. Warren and Larry Gara. There are important distinctions between these two cases. Warren suggested to his stepson that he refuse to register, and was prosecuted even though the stepson rejected the suggestion and went ahead and registered; while Gara merely encouraged and supported one of his students who had (previous to meeting Gara) refused to register.

Both cases raise similar issues of free speech and free exercise of religion. Both are petitions from Appeal Court decisions which leave religious freedom at the mercy of Congress. The 10th Circuit Court in the Warren case explicitly states: "A person may not decide for himself whether a law is good or bad, and if bad, that he is free to disobey it." To support this claim for the absolute supremacy of the state over the individual, an earlier Supreme Court decision (U. S. v. MacIntosh, since reversed) is quoted to the effect that, while we must obey the will of God, government must claim a total allegiance of its citizens which assumes that "submission and obedience to the laws of the land, those made for war as well as those made for peace, are not inconsistent with the will of God." To equate the will of Congress with the will of God is one way to resolve the conflict between conscience and the state—but it is not the way envisioned by the American form of government.

Likewise the 6th Circuit Court in the Gara case exalts Congress as the sole judge of "whether a clear and present danger existed, requiring the enactment of the statute..." with its provisions that so restrict freedom that a teacher may not legally console and support one of his students as the latter faces the test of imprisonment for abiding by his conscience. The Bill of Rights is in the Constitution, not to be interpreted by Congress, but to protect all citizens from the excessive invasions by the majority, and to set the limits beyond which even an overwhelming majority in the Congress may not pass.

## PASTORS URGE COURT ACT IN LARRY GARA APPEAL

Two thousand Ohio Protestant ministers, gathered in convention in Columbus last month, urged that the Supreme Court "consider" the Gara case "because of its far-reaching implications to all of us as Christian ministers."

"We pledge our moral support of those religious groups who are seeking justice in this particular case," the ministers' resolution stated.

Paul W. Sharp of the Ohio Council of Churches, describing the concern of the convention about this case, declared that the Appeal Court decision against Gara appears "to be a deeply serious abridgement of that which they believe to be one of their most inalienable rights as Christian ministers; namely, the right to counsel lay members of their churches and fellowships to adhere to the decisions of the individual conscience."

## Notices

*Income tax deduction* of contributions to the CCCO is not allowed; sorry, we're not on the approved list.

*The Grapevine*, which has told the story of prison doings of C.O.'s, has suspended publication and its news items will be carried in these columns.

# Norton Conviction Reversed

*(Continued from Page 1)*

decision not to register. He was subsequently indicted for non-registration because of his refusal to sign the registration card. At his trial in Albany on Feb. 22, 1949, Norton's attorney, Prof. Harrop Freeman of Cornell University, attempted to present witnesses to prove that Norton was following historic peace teachings of the Society of Friends, and that therefore he should not be compelled to act against his religious briefs. Freeman called Henry J. Cadbury, American Friends Service Committee chairman, and Elizabeth Hazard of the New York Yearly Meeting of Friends for this purpose, but Judge Stephen W. Brennan refused to hear such testimony, declaring:

"We are not going to have a religious trial here. This trial is not and cannot be a question of Quaker belief in opposition to war. I will not have it."

A jury then found Norton guilty after ten minutes deliberation; he was sentenced to four months and released on bond pending the appeal.

The Appeal court (reversal) on January 19 said "the prosecution did not prove commission of the crime charged." The Circuit Judges pointed out that the Selective Service regulations state that if a man appears but "is unable or refuses to sign" the registration card, then the registrar shall sign for him and consider him registered. Thus, while the evidence showed that Norton had appeared at the board and had refused to sign the card, "it offered no proof that he refused to give all information necessary for the registrar to make the required entries on the registration card. Hence, we conclude that the crime for which he was indicted was not proven.

"The regulation having provided a substitute for the registrant's signature," the Appeal Court decision held, "we believe that the substitute was meant to serve for all purposes, including the condoning of the refusal. Criminal statutes must be strictly construed. If the substantive duty of furnishing all requested information is performed by a registrant, we think he does 'submit to registration' and that the statute and regulations do not clearly make criminal a refusal to perform the purely ministerial duty of signing."

The decision did not, however, dismiss the indictment, and Norton could be required to stand trial again. "It is possible," the court reasoned, "that on a new trial if the prosecution sees fit to have one, evidence may be adduced to show that the accused refused some specific duty other than signing the card, as, for example, refusal to answer questions put to him by the chairman."

* * * * * * * *

The great majority of convicted non-registrants notified their draft boards of their refusal, and some, like Norton, went there in person. In some of these cases the facts may be close enough to the Norton case to warrant a similar outcome if appeals had been entered. The most interesting speculation concerns Charles Rickert, where the facts are almost identical. It was Rickert's "crime" of refusing to sign a registration card that led in turn to the arrest and prosecution of Larry Gara for counselling, aiding and abetting Rickert. But like most of the others, Rickert pled guilty and no appeal was entered.

It appears probable that the regulation on which the Norton decision is based was written with C.O.'s specifically in mind; and the court's ruling lends weight to the contention that from a strict interpretation of Selective Service regulations, any non-registrant who notified the government of his action should have been registered anyway. It was the fear that this would in fact happen that led many non-registrants to make no formal notification of their action.

The British National Service Acts, it should be noted, provide that the government can refer to the tribunals for consideration the case of any man believed to be a conscientious objector, whether or not he had registered. This even more sweeping provision for "automatic" registration may be the reason that in ten years of conscription in Britain, there were only eight prosecutions for non-registration.

The trend towards automatic registration here has undoubtedly been strengthened by the Norton decision, but after all the "victory" is at best of limited technical value. Britain with its automatic registration and its much more liberal wartime treatment of C.O.'s still prosecuted more than 5000 C.O.'s in the criminal courts for other phases of draft violation, plus another 1500 in army courts-martial. The collision between universal military training and the conscientious objector (especially of the "absolutist" sort) can be but slightly cushioned by technical legal formulae and court decisions. As long as we have military conscription there will continue to be Norton cases—and most of them will be "lost."

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